

THE HONORABLE TIMOTHY W. DORE

Chapter 7

Hearing Location: Seattle, Rm. 8106

**Subject to Court Approval:**

Hearing Date: June 9, 2023

Hearing Time: 9:30 a.m.

Response Date: June 2, 2023

UNITED STATES BANKRUPTCY COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In re:

WIRELESS ADVOCATES, LLC,

Debtor.

Bankr. No. 23-10117-TWD

Motion to Approve Stipulation to  
Relieve the Army & Air Force Exchange  
Service from the Automatic Stay under  
Section 362(d) and for Abandonment of  
Property

**I. Introduction**

The United States of America, on behalf of creditor the Army and Air Force Exchange Service (AAFES), moves under 11 U.S.C. §§ 362(d) and 554, Rules 4001 and 6007 of the Federal Rules of Bankruptcy Procedure, and Rule 4001-1(c) of the Local Rules W.D. Wash. Bankr. (Local Rules), for entry of an Order approving the *Stipulation to Relieve [AAFES] from the Automatic Stay under Section 362(d) and for Abandonment of Property*, [ECF No. 238] (the Stipulation), entered between AAFES and Virginia Burdette, Chapter 7 Trustee for Debtor Wireless Advocates, LLC

MOTION TO APPROVE STIPULATION TO RELIEVE AAFES FROM THE  
AUTOMATIC STAY UNDER 11 U.S.C. § 362(d) AND FOR  
ABANDONMENT OF PROPERTY - 1  
(B23-10117-TWD)

UNITED STATES ATTORNEY  
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SEATTLE, WASHINGTON 98101  
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1 (Trustee). The requested stay relief and abandonment would permit AAFES to remove and dispose  
2 of property Debtor abandoned when it ceased selling mobile phones and related services in retail  
3 stores AAFES operates on military bases throughout the United States. The property in question  
4 bears no value for the bankruptcy estate; it consists of sales kiosks (many damaged), used computer  
5 monitors and printers, office supplies, and display model phones. AAFES urgently needs relief from  
6 the automatic stay so it can remove Debtor's abandoned property to make room for a new mobile  
7 services contractor it expects to occupy its stores within days.

## 8 **II. Factual Background**

### 9 **A. Debtor contracted with AAFES to sell mobile phones and related** 10 **services on military bases throughout the country.**

11  
12 Wireless Advocates, LLC (Debtor) was a provider of wireless products and services in  
13 numerous retail locations. Debtor's business included selling phones and services for several mobile  
14 phone service providers via kiosks located within retail stores located on military bases throughout  
15 the United States. AAFES is a joint non-appropriated funds instrumentality of the Army and Air  
16 Force within the U.S. Department of Defense. Declaration of Christopher J. Nitschke (Nitschke  
17 Decl.) ¶ 3, attached hereto. Among other things, AAFES operates retail stores on U.S. military bases  
18 for qualified customers (primarily military personnel and their families).

19  
20 In 2016, AAFES and Debtor entered a contract (the Contract) for Debtor to sell mobile  
21 phones and wireless services at 144 stores on military bases in the United States, Puerto Rico, and  
22 Guantanamo Bay, Cuba. Nitschke Decl. ¶ 5, Exh. A thereto (Contract excerpts). Via Contract  
23 amendment, the number of military stores in which Debtor operated was reduced to 93 in February  
24 2022. *Id.* In July 2022, Debtor invoked a 180-day notice provision to establish January 25, 2023, as  
25 the Contract expiration date. Nitschke Decl. ¶¶ 5 & 7. On December 5, 2022, however, Debtor  
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1 notified AAFES that it was immediately ceasing operations and winding up its affairs. Nitschke  
2 Decl. ¶ 7. AAFES is a creditor of Debtor and plans to file a proof of claim based on the Contract.

3 *Id.* ¶ 8.

4 B. Debtor collected its valuable inventory but abandoned its kiosks and  
5 other property in AAFES' military stores.

6 Upon contract termination or expiration, the Contract between AAFES and Debtor required  
7 Debtor (referred to as "concessionaire") to "remove all concessionaire furnished property not  
8 purchased by [AAFES] including equipment, furniture and movable trade fixtures, tools of the trade  
9 and supplies." Nitschke Decl. ¶ 9. If Debtor failed promptly to remove its property, the Contract  
10 authorized AAFES to remove and store it at Debtor's expense, or to dispose of Debtor's property by  
11 public or private sale and defray its removal, storage, sale costs with the proceeds thereof. *Id.*  
12

13 After ceasing operations under the Contract in early December 2022, Debtor removed its  
14 valuable property from the military store premises. Nitschke Decl. ¶ 9. Debtor removed from the  
15 military stores all its mobile phone inventory and computer CPUs. *Id.* Debtor left other types of  
16 property behind, however, in at least 65 military store locations. Nitschke Decl. ¶ 10. Debtor's  
17 abandoned property includes 65 kiosks, computer peripherals (e.g., monitors, keyboards, mice,  
18 printers), mobile phone accessories (e.g., cases and chargers), office supplies (e.g., paper, staplers,  
19 tape, paper clips, rubber bands, cleaners, etc.), and more than 200 display phones (collectively, the  
20 Abandoned Property). Nitschke Decl. ¶ 11. The display phones remain tethered to the kiosks by a  
21 secure, antitheft cable. *Id.* While Debtor operated its sales kiosks, the phones were accessible for  
22 shoppers, who regularly handled them. *Id.* No SIM cards were installed, and the phones were  
23 inoperable; instead, they ran demo software highlighting the phones' functions and applications. *Id.*  
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1 C. The Abandoned Property is not marketable and bears no value for the  
2 bankruptcy estate.

3 Debtor damaged many of its kiosks when it removed its valuable property upon ceasing  
4 operations. Nitschke Decl. ¶ 10. The property recovery teams who collected Debtor's property  
5 lacked keys for many kiosk cabinets, so they forced the cabinets open, damaging them in the  
6 process. *Id.* They also marked with permanent markers the cabinets they had emptied as they  
7 progressed. *Id.* Further, the kiosks and their cabinets were constructed in such a way that they can  
8 be removed only by demolition. Nitschke Decl. ¶ 13. As such, the kiosks lack any resale value.  
9

10 It is uncertain whether the used demo/display model phones could be reset and sold as  
11 serviceable. Debtor's decision to leave the display phones behind strongly supports the conclusion  
12 that they lack any significant sale value. The abandoned office supplies and used computer  
13 peripherals likewise have minimal, if any, resale value. AAFES estimates its cost to dispose of the  
14 Abandoned Property will be \$142,000. Nitschke Decl. ¶ 13. The Abandoned Property therefore  
15 holds no value for the bankruptcy estate.  
16

17 D. AAFES urgently needs to remove the Abandoned Property from its  
18 stores to make room for a new mobile phone services contractor it  
19 expects to move in within days.

20 AAFES has an urgent business need to remove the Abandoned Property from its military  
21 stores. AAFES needs the space occupied by the Abandoned Property for use by a new mobile phone  
22 services contractor with whom AAFES entered a contract on May 17, 2023. Nitschke Decl. ¶ 14.  
23 Under the Contract with Debtor, AAFES is authorized to remove the Abandoned Property from its  
24 premises and dispose of it at Debtor's expense. Nitschke Decl. ¶ 9. To date, AAFES has refrained  
25 from removing and disposing of the Abandoned Property due to the automatic stay imposed by 11  
26 U.S.C. § 362(a).  
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### III. Argument

A. AAFES is a creditor who has standing to seek relief from the automatic stay.

Sections 362(d) and 554(b) of the Bankruptcy Code authorize a “party in interest” to seek relief from the automatic stay and abandonment of estate property. 11 U.S.C. §§ 362(d) and 554(b). AAFES is a creditor that plans to file a proof of claim based on its Contract with Debtor. Nitschke Decl. ¶ 8. *E.g., Kronemyer v. Am. Contr. Indemnity Co. (In re Kronemyer)*, 405 B.R. 915, 921 (9th Cir. BAP 2009) (party in interest includes creditor). Further, AAFES is a party in interest because the automatic stay impedes its ability to remove Debtor’s Abandoned Property from its military stores. AAFES therefore may seek relief from the automatic stay and abandonment of property under Sections 362(d) and 554(b).

B. Relief from the automatic stay is authorized “for cause” under Section 362(d)(1) because Debtor’s Abandoned Property impedes AAFES from conducting business within its military stores.

Section 362(d)(1) authorizes relief from the automatic stay “for cause, including the lack of adequate protection . . . .” 11 U.S.C. § 362(d)(1). The specific mention of lack of adequate protection is not limiting; “cause” under Section 362(d)(1) broadly includes other situations in which an interested party needs relief from the automatic stay. *In re A Partners, LLC*, 344 B.R. 114, 127 (Bankr. E.D. Cal. 2006). Courts determine whether to grant stay relief “for cause” based on several factors, including (as relevant here) whether stay relief: (1) will interfere with the bankruptcy; (2) will injure the debtor or other creditors; (3) is necessary to avoid injury to the moving interested party. *Id.*

AAFES demonstrates cause sufficient to warrant the limited stay relief it seeks. AAFES seeks relief only as to the Abandoned Property—property that Debtor deliberately left behind in

AAFES' military stores when it collected the property it deemed valuable. Nitschke Decl. ¶ 14; Stipulation at 4, ¶ 2. Based on the Abandoned Property's damaged, used, or otherwise unmarketable nature, AAFES and the Trustee have stipulated that the Abandoned Property bears no value for the bankruptcy estate. Stipulation at 3, ¶ L. Thus, allowing AAFES to remove and dispose of the Abandoned Property will neither interfere with administration of this bankruptcy nor injure the Debtor or other creditors. Without stay relief, however, AAFES will be harmed by the inability to use strategic retail space within its military stores to house a new mobile phone and services contractor that it anticipates being ready to move in within days. Nitschke Decl. ¶ 14; Stipulation at 3, ¶ M. Thus, all relevant factors support granting relief from the automatic stay "for cause" under Section 362(d)(1). *In re A Partners*, 344 B.R. at 127.

C. The Abandoned Property should be formally abandoned under Section 554(b) because it is of no value to the bankruptcy estate.

Section 554(b) authorizes the Court to order the Trustee to abandon property that is "of inconsequential value and benefit to the estate." The Abandoned Property at issue here is damaged, used, or otherwise unmarketable. Nitschke Decl. ¶¶ 10, 11, 13; Stipulation at 3, ¶¶ J, K, L. For this reason, Debtor left the Abandoned Property in AAFES' military stores when it collected its mobile phone inventory and CPUs. Nitschke Decl. ¶ 10, 11. Likewise, the Trustee—which the Court has authorized to operate Debtor's business and investigate its financial affairs—has stipulated to abandonment based on her judgment that the Abandoned Property lacks any value to the bankruptcy estate. Stipulation at 3, ¶ L, and at 4, ¶ 1; ECF No. 208 (Order Authorizing Trustee to Operate Debtor's Business). Accordingly, the Court should order the formal abandonment of the Abandoned Property under Section 554(b) because it is "of inconsequential value and benefit to the estate."

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DATED this 25th day of May 2023.

*s/ Kyle A. Forsyth*

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*Attorneys for AAFES*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee in the Office of the United States Attorney for the Western District of Washington and of such age and discretion as to be competent to serve papers;

I further certified that on this date, I electronically filed the above document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all Registered ECF Participants.

DATED this 25th day of May 2023.

s/ Crissy Leininger  
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